IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

OP.No. 13643 of 1999(Y)

PETITIONER:

TRICHUR DISTRICT MOTOR TRANSPORT CO-OPERATIVE SOCIETY LTD.
NO.R 717, MACHUNGAL LANE, TRICHUR, REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.P.RAMAKRISHNAN
SRI.T.C.KRISHNA

RESPONDENTS:
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1. DEPUTY LABOUR COMMISSIONER (AUTHORITY UNDER THE PAYMENT OF SUBSISTENCE ALLOWANCE ACT) TRICHUR.

2.. T. CHANDRAN, THEKKAPATT HOUSE, KANNATTUKARA, TRICHUR-11.

R1 BY SHRI P.A. SALIM, GOVERNMENT PLEADER
R2 BY ADV. SRI.M.B.PRAJITH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1-TRUE COPY OF THE STATEMENT FILED BEFORE THE INSPECTOR & AGRICULTURE LABOUR, TRICHUR BY THE PETITIONER ON 28.1.1998

EXT.P2-TRUE COPY OF THE ORDER OF THE FIRST RESPONDENT DATED 5.11.1998.

// TRUE COPY //

T.R. RAMACHANDRAN NAIR, J.

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O.P.NO.13643 of 1999-Y

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DATED THIS THE 31ST JANUARY, 2007.

JUDGMENT

The petitioner is a co-operative society. The second respondent was employed as an Attender. The Society placed him under suspension with effect from 22.10.1996 pending enquiry. The second respondent moved the first respondent claiming subsistence allowance under the Kerala Payment of Subsistence Allowance Act and the Rules. The authority, after conducting due enquiry, passed Ext.P2 order, whereby the petitioner has been directed to pay the eligible subsistence allowance of Rs.9,192.68 (rounded to Rs.9,193/-).

2. I heard Shri P. Ramakrishnan, learned counsel for the petitioner. It was argued that second respondent was appointed not on a regular basis as he was over aged at the time of appointment. It was also contended that in view of the decision of this Court reported in **Chirakadavu S. Co. op. Bank Ltd. v. Authority under Payment of S.A. Act** (1998(1) KLT 248) the second respondent is not entitled to be paid any amount towards subsistence allowance.

3. It was argued by Shri M.B. Prejith, learned counsel for the second respondent that the authority has applied its mind to the contentions raised by the parties and has arrived at a just decision. It was also contended that

as the second respondent was an employee under the petitioner society, going by Rule 198(6) of the Rules, he will be eligible for payment of the due allowance.

4. The second respondent, at the time of the suspension, was working in the society. The society has placed him under suspension pending enquiry. In Ext.P1, the main contention raised is that the second respondent was over aged at the time of his employment. Going by Rule 198(6) of the Rules, an employee who is placed under suspension, is entitled for payment of subsistence allowance under the Payment of Subsistence Allowance Act. Therefore, the view taken by the first respondent is correct and in the absence of any dispute regarding the quantum that is ordered, I find that the order does not suffer from any infirmity. The original petition is dismissed.

The petitioner will pay the amount to the second respondent within one month from the date of receipt of a copy of this judgment. If the amount has already been deposited before the authority, the second respondent will be free to move the authority for getting release of the amount.

(T.R. RAMACHANDRAN NAIR)

JUDGE.

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T.R. RAMACHANDRAN NAIR, J.

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JUDGMENT

31ST JANUARY, 2007.